REMARKS

Favorable action on the merits is solicited in view of the foregoing amendments and the following remarks.

I. Claim Status and Amendments

Claims 15-30 are pending in this application and subject to restriction.

Claim 17 is amended to independent form and to incorporate the subject matter of previous claim 15. Claim 17 is also amended to define the abbreviated term "UCP" as "uncoupling protein" as per the disclosure at page 1, line 11. Claim 18 is amended to include SEQ ID NOs for the recited peptides as supported by the disclosure, for example, at page 3, lines 20-31.

Claims 19-20 are amended in a non-narrowing manner to provide proper antecedent basis for the recited terminology and to change their dependency to depend on claim 18 in view of the cancellation of claim 15.

Claim 21 is amended to depend on claim 18 and in a non-narrowing manner to provide proper antecedent basis for the recited terminology. Claim 21 is also amended to remove the term "preferentially" and the limitations thereafter which have been added back in new dependent claim 31.

Claims 22 and 23 are amended to depend on claim 18 and in a non-narrowing manner to provide proper antecedent

basis for the recited terminology. Claims 22 and 23 are also amended to remove the term "like" and the limitations thereafter which have been added back in new dependent claims 32-34.

Claim 24 is amended to depend on claim 18 and in a non-narrowing manner to provide proper antecedent basis for the recited terminology.

Claim 25 is amended to "comprising" format and to depend on claim 18.

Claims 26-29 are amended in a non-narrowing manner to better conform to US practice and to provide proper antecedent basis for the recited terminology.

Claim 27 is amended to split the subject matter therein into three claims, including amended claim 27 and new dependent claims 34 and 35.

New claims 31-37 have been added. See the discussion above for the support.

Claims 15-16 and 30 have been cancelled without prejudice or disclaimer thereto. Applicants reserve the right to file a continuation or divisional on any cancelled subject matter.

Claims 17-29 and 31-34 are pending upon entry of this amendment.

No new matter has been added.

II. Response to Restriction

In response to the Restriction Requirement, Applicants hereby provisionally elect with traverse the invention of Group I, claims 15-27, drawn to a composition and a cosmetic and/or dermatological and/or pharmaceutical composition comprising the protein of the uncoupling protein (UCP) family, as an active agent.

In response to the Species Election Requirement, Applicants hereby provisionally elect with traverse the following species: (i) SEQ ID NO: 1 as recited in claims 18 and 19 as the elected sequence; (ii) water as the single acceptable solvent; (iii) to reduce, eliminate or prevent excess of subcutaneous fat as the single disorder; and (iv) water-in-oil emulsions as the single formulation. As to the vector, Applicants believe that amendment to claim 23 obviates the need to elect a single vector. Nonetheless, in the event that the Office disagrees, then Applicant elect with traverse liposome as the single vector.

It is respectfully submitted that at least claims 15-27 are readable on the elected species.

The reasons for traverse are as follows.

This application is a § 371 national stage application of a PCT International Application. Accordingly,

the Office is required to follow the rules regarding unity of invention in PCT rules 13.1 and 13.2. Determination of the lack of unity is possible only when the claims of different groups lack a "special technical feature" relative to one another. In the present case, claims 17 and 18 are generic to the compositions of the dependent claims. In this regard, the composition of claims 25, 15 and 17 of Group I are used in the method according to claims 28-30 of Group II. Therefore, it is believed that the claims by definition share the same special technical feature of claim 14. For this reason, the claims have unity of invention.

Further, the Examiner's attention in this regard is directed to PCT Rule 13.2 in Part 1b of the Annex B of the administrative instructions under the PCT, which specify that "special technical features" is defined as meaning those features that define the contribution which each of the inventions, considered as a whole, makes over the prior art. In other words, PCT Rule 13.2 is art-based and requires the citation of a publication showing the "special technical feature".

The Office relies on Ni et al. (US 2003/0036646A1) as teaching peptide fragments SEQ ID NO: 38 and SEQ ID NO: 45 of the uncoupling protein. However, these peptides in Ni et al. do not encompass nor read on SEQ ID NOS: 1-9 of the

amended claims. Thus, Ni et al. fails to disclose the peptides of the claims.

Thus, it is believed that the Office Action fails to satisfy its burden in showing that claims lack of unity under the requirements of PCT Rules 13.1 and 13.2.

Further, it is respectfully submitted that had unity of invention been properly applied, unity would have been found to exist and all of the claims would have been examined together in this application.

In addition, even if US Restriction practice was followed, it is believed that restriction in this case would have been improper.

It is well established that there are two criteria for a proper requirement for restriction: (1) the inventions must be independent (see M.P.E.P §§ 802.01, 806.06, and 808.01) or distinct as claimed (see M.P.E.P §§ 806.05 to 806.05(j)); and (2) there would be a serious burden on the examiner if restriction is not required (see M.P.E.P. §§ 803.02, 808, and 808.02). However, it is believed that the Office has failed to fulfill these criteria. For the reasons noted above, the claims of the different groups contain overlapping and related subject matter. Consequently, a search of the compositions of Group I would necessarily overlap that of the methods of using the compositions of Group II. Thus, it is believed that a search of all the claims in their entire

scope will not constitute a serious burden on the Office given their related and overlapping subject matter.

For these reasons, it is believed that the restriction between Groups I and II should be withdrawn.

As to the election of species requirement, Applicants present the following arguments.

The elected solvent shares technical feature with other solvents recited in claim 22 because they are all chemically equivalent and safe. It is unclear why the selection of one solvent would make a patentable distinction over another.

The elected vector shares technical feature with other vectors recited in claim 23 as they intend to improve penetration and bioavailability of active ingredient in the skin.

The elected disorder "excess of subcutaneous fat" shares technical feature with cellulitis (see page 7, lines 25-28) and orange peel (see page 7, lines 28-30) as "excess of subcutaneous fat" results in unaesthetic signs called "cellulitis" and "orange peel". It is interesting to keep in mind that "cellulitis", as used in Ni et al. in paragraph 701, refers to a medical term referenced in Medline as "An acute, diffuse, and suppurative inflammation of loose connective tissue, particularly the deep subcutaneous tissues, and sometimes muscle, which is most commonly seen as a result of

infection of a wound, ulcer, or other skin lesions." Cellulitis is mainly caused by bacteria, as recited by Ni et al. in paragraph 701, and is completely distinct from the term "cellulitis" as used in cosmetic field, referring to unaesthetic aspect of the skin due to excess of subcutaneous fat as evidenced by the information at the website noted below.

http://www.ncbi.nlm.nih.gov/sites/entrez?Db=mesh&Cmd=ShowDetailView&TermToSearch=68002481&ordinalyos=1&itool=EntrezSystem2.PEntrez.Mesh.MeshResultsPanel.MeshRVDocsum.

The formulation "hydro-alcoholic solution" shares technical feature with "aqueous solution" recited in claim 27 as they are chemically equivalent.

For these reasons, Applicants submit that restriction and election of species requirements are improper. Thus, kindly search and examine of all the claims in their full scope together in this application as the inventions of Group I and Group II have unity of invention.

In the event that the Office disagrees with the traversal and maintains the requirement, then kindly consider the possibility of rejoinder of the non-elected invention, upon a determination of allowance of the elected invention, per U.S. rejoinder practice (See M.P.E.P. § 821.04). Also, please consider and examine additional species, upon a

determination of allowance of the generic claims, in accordance with U.S. election of species practice.

Favorable action on the merits is solicited.

Please note that the Applicants are no longer a small entity concern. Henceforth, the Applicants should be regarded as large entity.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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